

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MARY DUETT, a Washington resident,

11 Plaintiff,

12 v.

13 STATE FARM MUTUAL
14 AUTOMOBILE INSURANCE
COMPANY, a foreign corporation doing
business in Washington,

15 Defendant.

16 Case No. 2:19-cv-01917-RAJ

17 ORDER

18 **I. INTRODUCTION**

19 This matter comes before the Court on Defendant's Motion for Partial Summary
20 Judgment Dismissing Declaratory Judgment and *Olympic Steamship* Claims. Dkt. # 11.
Having considered the submissions of the parties, the relevant portions of the record, and
21 the applicable law, the Court finds that oral argument is unnecessary. For the reasons
22 below, the motion is **GRANTED**.

23 **II. BACKGROUND**

24 In 2009, Plaintiff Mary Duett was struck by a pick-up truck as she was crossing a
25 street, sustaining several injuries and causing permanent damages. Dkt. # 1-1 ¶ 3.3.¹ The

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27 ¹ For purposes of this motion, Defendant assumes without conceding that the allegations
in the complaint are true. Dkt. # 11 at 2 n.1. The Court does the same.

1 driver, Yuri DiBello, however was insured only up to \$100,000. *Id.* ¶¶ 3.3-3.4. Ms.
 2 Duett made a policy limit demand on Mr. DiBello and later settled her claims against him
 3 for \$100,000. *Id.* ¶ 3.5. Still, Ms. Duett's treatment for her injuries continued. *Id.*

4 About nine years later, her treatment complete, Ms. Duett turned to her own
 5 insurer, Defendant State Farm Mutual Automobile Insurance Company ("State Farm").
 6 *Id.* ¶ 3.6. Under her policy with State Farm, she was entitled to benefits for injuries
 7 caused by underinsured motor vehicles ("UIM"). *Id.* ¶ 5.2. That is, State Farm agreed to
 8 pay "compensatory damages for bodily injury [that] an insured is legally entitled to
 9 recover from the owner of an underinsured motor vehicle." *Id.* ¶ 5.3. Given her medical
 10 expenses, pain and suffering, loss of ability and capacity to enjoy life, and permanent
 11 disabilities, Ms. Duett asserted a total damage of \$221,543.79. *Id.* ¶ 3.6. Because this
 12 amount exceeded the \$100,000 she received from her settlement with Mr. DiBello, she
 13 sought UIM benefits from State Farm. *See id.* ¶¶ 3.5-3.6. Offsetting the \$100,000, Ms.
 14 Duett submitted UIM demand of \$121,543.79. *Id.*

15 On April 18, 2018, State Farm denied her claim. *Id.* ¶ 3.7; Dkt. # 12-1. State
 16 Farm stated: "Our evaluation would indicate Ms. Duett was made whole by [the at fault
 17 carrier's insurance provider], therefore, State Farm is unable to consider further payment
 18 under the underinsured motorist coverage." Dkt. # 12-1. State Farm did not respond to
 19 Ms. Duett's later request for an explanation of State Farm's determination. Dkt. # 1-1
 20 ¶¶ 3.8-3.12.

21 Ms. Duett sued State Farm in King County Superior Court, and later State Farm
 22 removed to this Court. Dkt. # 1. State Farm then moved for partial summary judgment
 23 on Ms. Duett's declaratory judgment claim and request for attorney's fees. Dkt. # 11.

24 **III. LEGAL STANDARD**

25 Summary judgment is appropriate if there is no genuine dispute as to any material
 26 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
 27 56(a). The moving party bears the initial burden of demonstrating the absence of a

1 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
 2 Where the moving party will have the burden of proof at trial, it must affirmatively
 3 demonstrate that no reasonable trier of fact could find other than for the moving party.
 4 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where
 5 the nonmoving party will bear the burden of proof at trial, the moving party can prevail
 6 merely by pointing out to the district court that there is an absence of evidence to support
 7 the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets
 8 the initial burden, the opposing party must set forth specific facts showing that there is a
 9 genuine issue of fact for trial to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477
 10 U.S. 242, 250 (1986). The court must view the evidence in the light most favorable to
 11 the nonmoving party and draw all reasonable inferences in that party's favor. *Reeves v.*
 12 *Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

13 IV. DISCUSSION

14 State Farm seeks summary judgment on two issues. First, it argues that Ms.
 15 Duett's declaratory judgment claim fails because Ms. Duett does not identify a
 16 controversy over the existence or scope of coverage under the automobile insurance
 17 policy. Dkt. # 11 at 2. Second, it argues that Ms. Duett is not entitled to attorney's fees
 18 under *Olympic Steamship Co., Inc. v. Centennial Ins. Co.*, 811 P.2d 673 (Wash. 1991),
 19 because this is a claim dispute not a coverage dispute. *Id.*

20 A. Declaratory Judgment

21 Under Washington's Declaratory Judgment Act, courts may "declare rights, status
 22 and other legal relations." *Robertson v. GMAC Mortg. LLC*, 982 F. Supp. 2d 1202, 1206
 23 (W.D. Wash. 2013) (quoting *Nollette v. Christianson*, 800 P.2d 359 (Wash. 1990)).
 24 "[A]bsent issues of major public importance, a justiciable controversy must exist before a
 25 court's jurisdiction may be invoked under the act." *Nollette*, 800 P.2d at 362. A
 26 justiciable controversy exists when there is:

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1 (1) ... an actual, present and existing dispute, or the mature seeds of one, as
 2 distinguished from a possible, dormant, hypothetical, speculative, or moot
 3 disagreement, (2) between parties having genuine and opposing interests,
 4 (3) which involves interests that must be direct and substantial, rather than
 potential, theoretical, abstract or academic, and (4) a judicial determination
 of which will be final and conclusive.

5 *Id.* Further, under RCW 7.24.020, a “person interested under a . . . written
 6 contract . . . may have determined any question of construction or validity arising under
 7 the . . . contract.”

8 There is no justiciable controversy here. Ms. Duett, in conclusory fashion, alleges
 9 that such a controversy exists over “the construction and interpretation of the
 10 [automobile] insurance policy.” Dkt. # 1-1 ¶ 4.7. Yet she has not identified any specific
 11 provision that she would like the Court to determine the “construction or validity” of.
 12 RCW 7.24.020. Nor has she identified any provision whose interpretation the parties
 13 disagree about. Indeed, State Farm admits UIM coverage under the policy. Dkt. # 9
 14 ¶ 4.7; Dkt. # 11 at 5, 8. Thus, Ms. Duett fails to raise an actual, present, or existing
 15 dispute as to the interpretation of the policy.

16 Of course, Ms. Duett seeks declaratory judgment on other issues as well. Dkt. # 1-
 17 1 ¶ 4.8. She asks the Court to declare that State Farm “acted arbitrarily and
 18 unreasonably[] and in bad faith, by failing to conduct a reasonable investigation into [her]
 19 UIM claim[] and failing to pay her UIM benefits.” *Id.* These issues, however, are best
 20 resolved through Ms. Duett’s contract and tort claims.

21 “Ordinarily, where a plaintiff has another adequate remedy, he or she should not
 22 proceed by way of a declaratory judgment action.” *Wagers v. Goodwin*, 964 P.2d 1214,
 23 1216 (Wash. Ct. App. 1998). That said, declaratory judgment “may be ‘appropriate’ in
 24 some situations, notwithstanding the availability of another remedy.” *Id.* Besides
 25 declaratory judgment, Ms. Duett alleges breach of contract, breach of the implied
 26 covenant of good faith and fair dealing, and bad faith. Dkt. # 1-1 ¶¶ 5.1-6.4, 9.1-9.4.
 27 These claims provide Ms. Duett with adequate relief—through these claims, the Court

1 will be able to resolve issues surrounding State Farm’s alleged bad faith and failure to
 2 perform under the insurance policy. Because Ms. Duett has other adequate remedies
 3 available, declaratory relief is generally inappropriate. And the Court sees no reason to
 4 deviate from this general rule.

5 Finally, Ms. Duett claims that another justiciable controversy exists as the Court
 6 must determine whether she is entitled to attorney’s fees under *Olympic Steamship Co. v.*
7 Centennial Insurance Co., 811 P.2d 673, 682 (Wash. 1991). Dkt. # 13 at 16-17. But this
 8 argument has no basis in the complaint; she raises it for the first time in her response to
 9 this motion. *See* Dkt. # 1-1 ¶¶ 4.1-4.8. In any event, Ms. Duett is not entitled to *Olympic*
 10 *Steamship* fees as a matter of law as described below. *See infra* Section IV.B.

11 For these reasons, the Court **GRANTS** State Farm’s motion for summary
 12 judgment on Ms. Duett’s declaratory judgment claim.

13 **B. Olympic Steamship Fees**

14 In *Olympic Steamship*, the Washington Supreme Court held that “an insured who
 15 is compelled to assume the burden of legal action to obtain the benefit of its insurance
 16 contract is entitled to attorney fees.” 811 P.2d at 682. The state supreme court later
 17 clarified its ruling in *Dayton v. Farmers Insurance Group*, 876 P.2d 896, 898 (Wash.
 18 1994). The *Dayton* court held that when “[c]overage is not an issue” and the dispute
 19 instead is “over the value of the claim presented under the policy,” the rule in *Olympic*
 20 *Steamship* does not govern. *Id.* Thus, if “the insurer admits coverage but, in good faith,
 21 denies or disputes the value of the claim, *Olympic S[teamship]* does not authorize fees.”
Solnicka v. Safeco Ins. Co. of Illinois, 969 P.2d 124, 126 (Wash. Ct. App. 1999).

22 Put differently, an insured may be entitled to *Olympic Steamship* fees when there
 23 is a “coverage dispute” but not when there is a “claim dispute.” *Id.*

24 Coverage disputes include cases in which coverage is denied and those in
 25 which the extent of the benefit is disputed. Coverage questions focus on
 26 such questions as whether there is a contractual duty to pay, who is insured,
 27

1 the type of risk insured against, or whether an insurance contract exists at
 2 all.

3 Claim disputes, on the other hand, raise factual questions about the
 4 extent of the insured’s damages. They involve factual questions of liability,
 injuries, and damages

5 *Id.* (citations omitted); *see also Leingang v. Pierce Cty. Med. Bureau, Inc.*, 930 P.2d 288,
 6 294 (Wash. 1997) (“[C]overage concerns whether the insurer has a duty to pay while a
 7 claim issue concerns how extensive damages were[.]”) (citing *Kroeger v. First Nat. Ins.
 8 Co. of Am.*, 908 P.2d 371, 373 (Wash. Ct. App. 1995)).

9 Despite Ms. Duett’s contestations, this, as a matter of law, is a claim dispute not a
 10 coverage dispute. Since the beginning, State Farm has not denied its contractual duty to
 11 pay UIM benefits; it has simply disputed the value of Ms. Duett’s claim. Dkt. # 12-1.
 12 Today, State Farm admits coverage. Dkt. # 9 ¶ 4.7 (“State Farm states that no justiciable
 13 controversy over the interpretation or construction of the policy exists because coverage
 14 is confirmed”). State Farm does not currently argue, for example, that an exclusion
 15 applies or that Ms. Duett does not qualify as an “insured” under the policy or that, even if
 16 Ms. Duett could establish damages greater than \$100,000, State Farm would not have a
 17 duty to pay. Dkt. # 15 at 6. State Farm’s current position, which the Court will hold it to,
 18 is that “it will pay whatever the jury determines to be the appropriate award (subject to
 19 the limits [of the policy]).” *Id.* at 7.

20 What remains to be determined, then, are factual questions about Ms. Duett’s
 21 injuries and damages stemming from her accident, making this a claim dispute. From
 22 there, the Court must assess whether Ms. Duett’s damages in fact exceeded \$100,000,
 23 entitling her to UIM benefits under the policy. Because State Farm admits coverage but
 24 disputes the value of Ms. Duett’s claim, *Olympic Steamship* does not apply.

25 Yet Ms. Duett insists that this is a coverage dispute. At bottom, however, she fails
 26 to identify any coverage issues, such as “whether there is a contractual duty to pay, who
 27 is insured, the type of risk insured against, or whether an insurance contract exists at all.”

¹ *Solnicka*, 969 P.2d at 126. Thus, her characterization of this matter as a coverage dispute
² is unconvincing.

3 In sum, the Court **GRANTS** State Farm's motion for summary judgment as to
4 attorney's fees under *Olympic Steamship*.

V. CONCLUSION

6 For the reasons stated above, the Court **GRANTS** Defendant's Motion for Partial
7 Summary Judgment Dismissing Declaratory Judgment and *Olympic Steamship* Claims.
8 Dkt. # 11.

DATED this 29th day of September, 2020.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge